



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Geo. H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. O-1910

Re: Liability of land conveyed
by the Farmers National
Grain Corporation to the
United States of America
to the assessment and col-
lection of State and county
ad valorem taxes for the
year 1937.

By your letter of January 29, 1940, you request of this Department an opinion upon the validity of the assessment for State and county ad valorem taxes, of certain lands in Potter County, Texas, conveyed by the Farmers National Grain Corporation to the United States of America, and in connection therewith you submit letters and papers outlining the facts and circumstances attending the transfer of this property, and the respective contentions of the two sovereignties in regard to its taxation.

These facts are fully stated in attached letter to you from Honorable Tom Seay, County Attorney, Potter County, from which we quote:

"During and prior to 1936 the Farmers National Warehouse Corporation, which we understand is a subsidiary of the Farmers National Grain Corporation, was the owner of certain property in Survey 137, Block 2, AB&M lands in Potter County, Texas, and all taxes had been paid up to and including 1936. State and County taxes were assessed against this property for the year 1937 in the name of the said corporation,

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the record title owner as of the date of assessment. Subsequently, it has been claimed that the title to this property had been transferred to the United States. A statement of the facts upon which the Government relies is contained in a letter from Mr. Peyton K. Evans, General Counsel of the Farm Credit Administration, to the Assessor and Collector of Taxes of this county, dated July 20, 1937, as follows:

"The Farmers National Grain Corporation was indebted to the Federal Farm Board (to whose functions the Farm Credit Administration succeeded under the terms of an executive order of the President of the United States executed March 27, 1933) in a large amount of money, and on June 12, 1936 it was agreed between the Farmers National Grain Corporation and the Farm Credit Administration to transfer a large part of the Corporation's assets and those of its subsidiaries to the United States Government (Farm Credit Administration) in partial extinguishment of the then existing indebtedness. This agreement was subject to the approval of the Secretary of the Treasury. The approval of the Secretary was obtained on November 7, 1936 . . . However, a blanket assignment of all of the assets covered by the agreement covered by the agreement of June 12, 1936 was executed by the Farmers National Grain Corporation on October 31, 1936. This assignment contained words of grant and conveyance and included both real and personal property . . . Separate conveyances of particular properties have been in preparation for a period of some months, and many of them have been delivered, but all have not been put on record. We do not consider, however, that the dates of such conveyances or the dates of their recordation are material in respect to the question of the right of the states or their political subdivisions to impose taxes thereon.'

"The property in question was conveyed by deed from the Farmers National Warehouse Corporation to the United States executed 'all as of October 31, 1936, but actually on this the 24th day of February, 1937,' which deed was

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filed for record on December 17, 1937, and recorded in Volume 280, page 42, of the Deed Records of Potter County.

"This property was all arbitrarily assessed for taxation on January 1, 1937, for the year 1937. We find in the file of the assessor and collector of taxes for Potter County a printed notice 'that on November 7, 1936, the United States of America became the owner of all real estate,' and other properties of this corporation. This notice is dated December 29, 1936, but date of receipt is not shown."

No question is presented here of the immunity of property owned and held by the United States of America, from state taxation of any kind, because it has long been settled beyond dispute that such property, whether owned and held for governmental purposes or otherwise, is exempt, or more properly, not subject to the taxes levied by a State, except by Congressional consent. The only question presented here is whether or not the property involved was actually owned and held by the United States of America on January 1, 1937, the date fixed by statute for determining ownership of property for tax purposes for the year.

Upon this issue of fact regarding ownership of the land in question on January 1, 1937, that is, whether or not same was owned and held by Farmers National Grain Corporation on that date or by the Farm Credit Administration, as an instrumentality or agency of the United States of America, we find, even in the statements made by representatives of the United States of America, a conflict of positions and facts. Hence, we cannot answer your question categorically but are constrained to answer same upon the assumption that one or the other state of facts is true.

In this connection, it should be stated that we do not have the benefit of a copy of any deed, assignment or other alleged muniment of title passing between the Farmers National Grain Corporation and the United States, and referred to in attached correspondence, but must assume that the facts and statements made in regard thereto correctly reflect the tenor, effect and reading of such instruments. With this in mind, we call your attention to the statement contained in letter from Mr. Payton A. Evans, General Counsel of the Farm Credit Administration, to the Assessor-Collector of Taxes for Potter County, dated July 20, 1937, and hereinabove set out as part of the

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quoted letter to you by said Assessor-Collector of Taxes. It is stated therein that the Farmers National Grain Corporation being indebted to the Federal Farm Board and its successor, the Farm Credit Administration, agreed, on June 12, 1936, to transfer a large part of its assets and those of its subsidiaries to the said Farm Credit Administration in partial extinguishment of the then existing indebtedness, which agreement was subject to the approval of the Secretary of the Treasury. Under the Statutes of Texas governing conveyancing and the passage of title to real estate, such understanding and agreement would not suffice to transfer title to real estate, but the statement is further made that "a blanket assignment of all of the assets covered by the agreement of June 12, 1936, was executed by the Farmers National Grain Corporation on October 31, 1936, which assignment contained words of grant and conveyance and included both real and personal property."

We are not able to say that the above described instrument did not vest in the United States of America, through the Farm Credit Administration, title to the realty in question here, upon its approval by the Secretary of the Treasury. We are not unmindful of the fact that the usual and customary mode of transferring title to real estate in Texas is by general warranty deed, in the form prescribed by statute, containing the usual formal component parts of premises, habendum, tenendum, reddendum, warranty and testimonium clauses. And if such instrument or deed was the sine qua non to passage of title in Texas, then we would say that the property here would be subject to State and county ad valorem taxes for the year 1937, because such deed, in this usual statutory form, was not executed until the 24th day of February, A. D. 1937. Nor would our conclusion be altered by the fact that said deed purported to relate back, "all as of October 31, 1936," because, in our opinion, the actual date of execution would govern.

But it is a rule of law too well established to require elaboration here, that title to real estate in Texas may pass by any written instrument which contains express words of grant or conveyance, thereby evidencing an intent between the parties to effect a transfer of title, and it is not necessary that the form of general warranty deed, suggested by the law makers, be literally followed to accomplish this purpose. We have before us the unqualified statement that on October 31, 1936, a written blanket assignment, covering among other assets and properties, the real estate involved in the instant inquiry, was duly executed

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by and between the Farmers National Grain Corporation and the Farm Credit Administration, purporting to convey said property, and containing words of grant and conveyance to this end, and being in consummation of an agreement made on June 12, 1936, between the parties to make such transfer. It is further stated that the necessary approval of the Secretary of the Treasury was obtained on November 7, 1936. Not having a copy of this assignment before us, and giving full credence to the aforesaid statements, we are impelled to the conclusion that not only the equitable, but the legal title as well, to the real estate in question, was vested in the United States, through the Farm Credit Administration, before January 1, 1937, and, consequently, under admitted principles of law, was not subject to State and county taxation for the year 1937.

On the other hand, we are confronted with a statement from another representative of the United States of America or one of its duly constituted instrumentalities and agencies, which presents a different aspect upon the question of the exact date, with reference to January 1, 1937, that title to this real estate passed from the Farmers National Grain Corporation to the United States. This statement is in the form of a letter from Honorable W. E. Daly, Assistant to General Counsel, Federal Land Bank of Houston, to Miss Jewel Davidson, Assessor-Collector, Potter County, of date June 29, 1937, and we quote the pertinent parts thereof as follows:

"Reference is made to your letters of May 28th and June 24 regarding the transfer of ownership of certain properties in Potter County from the Farmers National Warehouse Corporation to the United States of America.

"I have in my possession a deed executed under date of February 24th, 1937, by the Farmers National Warehouse Corporation, conveying to the United States of America the following described property:

. . . .

"This deed has not actually been accepted, and negotiations are now pending which will in all probability result in the acceptance of the deed. When this transaction is consummated the deed will, of course, be forwarded to Potter County for recording."

Should full faith and credit be accorded to the foregoing statement from an authorized representative of the grantee of the

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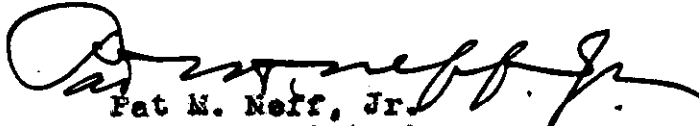
property here, the United States of America, through the Farm Credit Administration, then our answer would be diametrically opposite to that heretofore given. It is settled law in Texas that a deed or any other instrument, purporting to convey realty, does not divest title out of the grantor and vest same in the grantee, until there has been an actual acceptance of such deed or other instrument by said grantee. The laws of the State where property is located govern exclusively the construction and effect of all instruments intended to convey it. Hence, if, at the writing of the above quoted letter, to-wit June 29, 1937, the transaction described herein had not been consummated by acceptance, either expressly or impliedly, of the deed or other instrument purporting to convey title to this realty, then title thereto would, on that date, remain in the Farmers National Grain Corporation, a private corporation, and would be subject to state and county ad valorem taxes assessed against same for the year 1937.

We realize that this opinion cannot be useful to you until the conflicting factual statement appearing here is resolved one way or the other, and to this end, we suggest that you further develop the facts in the light of the foregoing discussion and be governed thereby in your findings.

Yours very truly

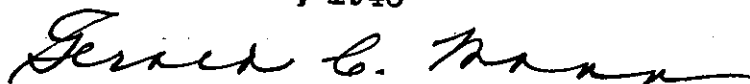
ATTORNEY GENERAL OF TEXAS

By


Pat M. Neff, Jr.
Assistant

PMH:N

APPROVED FEB 27, 1940


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